

UPDATED INFORMATIVE DIGEST
for
PROPOSALS TO AMEND SECTIONS 16423, 16433, and 16450 through
16455 OF TITLE 8, CALIFORNIA CODE OF REGULATIONS

Statutory Changes:

On September 9, 2011, the Legislature passed AB 436 (Solorio) to revise various provisions of SBX2-9¹ pertaining to prevailing wage compliance monitoring and enforcement by the Department of Industrial Relations (“Department”) on specified public works projects. AB 436 was signed into law by Governor and chaptered on September 30, 2011, (Stats. 2011, ch. 378), and it becomes effective on January 1, 2012.

AB 436 amended Sections 17250.30 and 81704 of the Education Code, Section 6531 of the Government Code, Section 1771.7 of the Labor Code, and Sections 6804, 20133, 20175.2, 20193, 20209.7, 20688.6, and 20919.3 of the Public Contract Code; it repealed Sections 1771.55, 1771.75, 1771.8, 1771.85, and 1771.9 of the Labor Code; and it repealed and added (*i.e.* adopted replacement language for) Sections 1771.3 and 1771.5 of, the Labor Code.

AB 436 made the following changes relative to the specific requirements of SBX2-9:

- Set forth in Section 1 [uncodified] a series of legislative findings and declarations pertaining to prevailing wage enforcement, including the following:
 - “(f) . . . [M]onitoring and enforcing compliance with the applicable prevailing wage requirements on a public works project paid for out of public funds that are derived from state-issued bonds, whether by use of an approved labor compliance program or other method, is and historically has been a necessary and prudent oversight activity, and under existing law, the authority to use bond proceeds for construction of a public works project inherently includes authority to pay reasonable costs of such oversight activities that are directly related to such construction from state bond proceeds allocated to such construction.
 - “(g) . . . [T]he reasonable and directly related costs incurred by the department [of Industrial Relations] in monitoring and enforcing compliance with the prevailing wage requirements for an awarding body on any public works project paid for out of public funds that are derived from state-issued bonds is a necessary and prudent oversight activity and constitutes an inherent cost of construction of the authorized public works project, payable from state bond proceeds allocated to such construction.”
- Through reorganization, amendment, and repeal, consolidated the relevant bond project requirements in Labor Code Section 1771.3 and the relevant labor compliance program requirements in Labor Code Section 1771.5.

¹ Stats. 2009-2010, 2d Ex. Sess., ch. 7.

- Replaced requirements to pay a fee to the Department for compliance monitoring and enforcement on specified projects with requirements to “reimburse the department for its reasonable and directly related costs of monitoring and enforcement” pursuant to established rates (but subject to the same maximum fees previously set under SBX2-9).
- Wholly exempted from the requirements of SBX2-9 any project that is subject to the labor compliance program requirement in Public Resources Code Section 75075 [referring to projects receiving funding from Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Bond Act of 2006 (Proposition 84)].
- Revised statutory language pertaining to the effective date of the new requirements (from “contracts awarded” to “contracts for public works projects awarded” . . .).
- Revised statutory language pertaining to the continued use of a previously approved labor compliance program in lieu of reimbursing the Department for compliance monitoring and enforcement on specified projects.
- Exempted from the requirements of SBX2-9 projects covered by a “collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.”²

Further Revisions to Regulatory Amendments Since the Notice of Proposed Rulemaking:

The Acting Director made the following substantive changes to the regulatory amendments originally proposed in the Notice of Proposed Rulemaking:

Section 16423. Approved Labor Compliance Programs Required by Statute.

Subpart (a) was revised by adding the word “either” after “Awarding Body” in the first line, by adding the phrase “or has elected to enforce such a program,” after “1771.5,” in the third line, by substituting the word “these regulations” for the words “section 16425 below” in the fourth line, and by deleting all of the text following the word “below” at the end of the fourth line.

Subpart (b) was revised by deleting subparts (2) and (3) after the initial preamble, by making nonsubstantive typographical changes in the language following the two deleted subparts, by changing the phrase “projects in which the Awarding Body participates” to “projects under the authority of the Awarding Body” in two places, and by deleting text after the word “below” that referred to notice of a contract or agreement with a third party LCP.

In subpart (c) the phrase “based on a consideration of the factors in sections 16425, 16426, or 16427 below” was replaced by “pursuant to these regulations,” and in subpart (d) a reference to third party labor compliance programs was deleted.

² This exception currently exists for projects subject to a labor compliance program requirement under various design-build statutes, but not for state bond-funded projects with a labor compliance program requirement. SBX2-9 originally eliminated this exception for projects awarded after the law became effective, but AB 436 reinstated the exception and expanded it to cover all such projects, including state bond-funded projects.

In subpart (e) an additional reference to section 16433 of the LCP regulations was added after the statutory reference to Labor Code Section 1771.5(a), and additional language was added at the end of the subpart to refer to the new SBX2-9 option of electing to accept specified statutory obligations and pay the Department for compliance monitoring and enforcement on all projects in order to obtain higher prevailing wage exemptions.

Section 16433. Limited Exemption.

In subpart (a) the reference to Labor Code Section 1771.55(a) was deleted; the phrase “projects in which the Awarding Body participates” was changed to “projects under its authority”; and “shall not” was changed to “may choose not to”.

Section 16450. Applicability.

The text of this regulation was repealed and replaced by new regulatory language that will become effective on January 1, 2012. The new language made the following specific revisions to the preexisting language:

The regulation was restructured by placing all the existing applicability provisions in subpart (a) and placing two exceptions to the requirements of SBX2-9 in new subparts (b) and (c). Subpart (a) now begins with the preamble “Except as provided in subparts (b) and (c) of this section,” and then adds to the introductory language “contracts for public works awarded on or after January 1, 2012 . . .”³ Items previously listed as subparts (a), (b), and (d) were redesignated as items (1), (2), and (3) respectively, with the effective date information deleted and the introductory phrasing changed from “any” or “all” “public works projects” to “the project.” A statutory reference at the end of (a)(3) was corrected, and former subpart (c) was deleted.

A new subpart (b) was added to exclude projects subject to the requirements of Public Resources Code Section 75050, and a new subpart (c) was added to exempt any project covered by a collective bargaining agreement that binds all of the contractors performing work on the project and that includes a mechanism for resolving disputes about the payment of wages.

Section 16451. Notice of Projects Subject to Fees.

The text of this regulation was repealed and replaced by new regulatory language that will become effective on January 1, 2012. The new language made the following specific revisions to the preexisting language:

In the title of this section, the word “Fees” was deleted and replaced by the words “Requirements of Subchapter.” The introductory language of subpart (a) was been revised by adding the following phrase after the word “subchapter” in the second line, “including projects that are subject only to the notice requirement in this subpart as specified in section 16450(c) above”. The language of subpart (a)(1) was revised by changing the phrase

³ An additional qualifying phrase “or the effective date of these regulations, whichever is later” was deleted from the final version of these regulatory amendments.

“project funded in whole or in part from a bond issued by the state to fund public works projects” to “project paid for in whole or in part out of public funds, within the meaning of Labor Code Section 1720(b), that are derived from a bond issued by the state”.

An additional subsection (I) was added to subpart (a)(3) to include within the notice whether the project is subject to a project labor agreement.

The prior language of subpart (a)(4) was deleted and replaced by new language stating that, “In lieu of submitting a written notice as specified in subpart (a)(3), the Awarding Body may complete and transmit the notice on line using the format and instructions for completing and transmitting the form specified on the Department’s website.”

Section 16452. Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations.

The text of this regulation was repealed and replaced by new regulatory language that will become effective on January 1, 2012. The new language made the following specific revisions to the preexisting language:

In the last line of subpart (a), the word “a” was changed to “each”. Subpart (b) was revised to read as follows: “For projects that are paid for in whole or in part out of public funds derived from any bond issued by the state, the Department shall determine the rate or rates to charge in accordance with the requirements and subject to the limitations set forth in Labor Code Section 1771.3(a)(3).”

The following introductory language was added to subpart (c): “Subject to any further limitation on state bond-funded projects established in accordance with subpart (b) above”.

Section 16453. Voluntary Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations in Lieu of Enforcing Labor Compliance Program.

The text of this regulation was repealed and no replacement text was proposed or adopted.

Section 16454. Payment of Fees for Compliance Monitoring and Enforcement by Department of Industrial Relations by an Awarding Body that Elects to Comply with the Requirements of Labor Code Section 1771.5(f).

The text of this regulation was repealed and replaced by new regulatory language that will become effective on January 1, 2012. The new language made the following specific revisions to the preexisting language: Statutory references in the title and text were revised to conform to statutory amendments adopted in AB 436.

Section 16455. Fee Waivers; Exemption from Requirements of this Subchapter.

The text of this regulation was repealed and replaced by new regulatory language that will become effective on January 1, 2012. The new language made the following specific revisions to the preexisting language:

In subparts (a) and (b), the phrase “An Awarding Body that operates an approved Labor Compliance Program” was changed to “An Awarding Body that requests and receives approval from the Director to continue operating a previously approved Labor Compliance Program”.

In subpart (a), the phrase “all public works projects” was changed to “every public works project”. In both subparts (a) and (b), the phrase “in which the Awarding Body participates” was changed to “under its authority”.

In subpart (b), the words “the requirements of” were inserted between “subject to” and “this subchapter”, and “pursuant to subparts (a) or (b) of section 16450” was changed to “pursuant to subparts (a)(1) and (a)(2) of section 16450”.

In the second line of subpart (c), the words “it contracts” were deleted and replaced with the phrase “the Director determines that the Awarding Body does not meet the conditions for a fee waiver under subpart (a) or (b) above, or is contracting”.

Subpart (d) was revised to read as follows. “An Awarding Body that is entitled to a waiver of the Department’s fees for compliance monitoring and enforcement, as specified in this section, may retain, request, or seek reimbursement of any fees or funding provided for the support of labor compliance monitoring and enforcement activities, to the extent authorized by any funding agency and any other applicable law.”

In subpart (e), the word “automatically” was deleted from the first line, and the words “requested and received approval for continued operation under subpart (a) or subpart (b) above” was inserted in place of the concluding phrase “provided notice under section 16423(b) above with respect to whether it intends to enforce or continue enforcing its Labor Compliance Program for all its public works projects or only those projects that are subject to a fee under this subchapter.”